

SEARCH AND SEIZURE — Good faith exception to exclusionary rule, in general — Revised 11/2009

The exclusionary rule usually prohibits the introduction of evidence obtained without a warrant, because the Fourth Amendment generally requires a warrant. However, the courts have developed an exception to that general rule when the police act in objective good faith reliance on a facially valid search warrant that is issued by a neutral magistrate but later is held to be invalid. In *United States v. Leon*, 468 U.S. 897 (1984), officers received a tip that narcotics were being sold out of a particular house. After investigating, an officer prepared an extensive affidavit for a warrant and had several prosecutors review the affidavit. A judge issued a facially valid search warrant and the search produced large amounts of evidence. The defendants filed motions to suppress the evidence and the trial court granted the motion to suppress, finding that although the officer had acted in good faith, the affidavit failed to establish probable cause for the search. The United States Supreme Court held that the evidence was admissible, stating, "our evaluation of the costs and benefits of suppressing reliable physical evidence seized by officers reasonably relying on a warrant issued by a detached and neutral magistrate leads to the conclusion that such evidence should be admissible in the prosecution's case in chief." 468 U.S. at 913. The Court recognized that reasonable minds can differ on whether an affidavit establishes probable cause, and concluded that the "strong preference for warrants" is most appropriately effectuated by according great deference to a neutral and detached magistrate's determination. *Id.* at 914. Noting that "the exclusionary rule is designed to deter police misconduct rather than to punish the errors of judges and magistrates," *id.* at 916, the

Court said that there was no reason to believe that exclusion of evidence seized pursuant to a warrant would have any significant deterrent effect on the issuing judge or magistrate. *Id.* The exclusionary rule "cannot be expected, and should not be applied, to deter objectively reasonable law enforcement activity." *Id.* at 917. The Court concluded that "the marginal or nonexistent benefits produced by suppressing evidence obtained in objectively reasonable reliance on subsequently invalidated search warrant cannot justify the substantial costs of exclusion." *Id.* at 922.

Despite the good-faith exception, evidence seized pursuant to a defective warrant may still be suppressed in four situations: (1) when the magistrate has been misled by information "that the affiant knew was false or would have known was false" but recklessly disregarded the truth; (2) when the issuing magistrate has "wholly abandoned" his or her judicial role; (3) when a warrant is based on an affidavit that lacks any indicia of probable cause, thus rendering " 'official belief in its existence entirely unreasonable' "; and (4) when a warrant is "so facially deficient ... that the executing officers cannot reasonably presume it to be valid." *Id.* at 923.

In *Illinois v. Krull*, 480 U.S. 340, 348 (1987), the United States Supreme Court expanded on the rationale of *Leon* and held that the Fourth Amendment does not require the exclusion of evidence obtained by police in objectively reasonable reliance on a statute that was later found to be invalid. In *Krull*, a statute allowed warrantless administrative searches of certain licensed businesses without any need for probable cause. In good faith reliance on that statute, an officer found stolen cars at a wrecking yard, seized them, and arrested Krull, the licensee. Krull moved to suppress the evidence, arguing that the statute was unconstitutional. The Illinois state courts struck

down the statute and ordered the evidence suppressed. On review, the United States Supreme Court held that the deterrent purpose of the exclusionary rule would not be served by excluding the evidence:

Unless a statute is clearly unconstitutional, an officer cannot be expected to question the judgment of the legislature that passed the law. If the statute is subsequently declared unconstitutional, excluding evidence obtained pursuant to it prior to such a judicial declaration will not deter future Fourth Amendment violations by an officer who has simply fulfilled his responsibility to enforce the statute as written. To paraphrase the Court's comment in *Leon*: "Penalizing the officer for the [legislature's] error, rather than his own, cannot logically contribute to the deterrence of Fourth Amendment violations."

Id. at 349-50.

In *Arizona v. Evans*, 514 U.S. 1 (1995), the United States Supreme Court held that the exclusionary rule does not require the suppression of evidence seized in violation of the Fourth Amendment when the erroneous information resulted from clerical errors by court employees. In *Evans*, an officer stopped Evans for driving the wrong way on a one-way street and asked for his driver's license; Evans said his license was suspended. The officer checked Evans's name on the computer in his patrol car and the computer said there was an outstanding justice court misdemeanor warrant for his arrest. Based on that warrant, the officer arrested Evans. While he was being handcuffed, Evans dropped a marijuana cigarette and a search of his car located more marijuana. The police later discovered that the warrant had been quashed 17 days before the stop of Evans. Evans argued that the marijuana should be suppressed because his arrest was unlawful. The United States Supreme Court held that the exclusionary rule did not require suppression of the evidence. Citing *Leon*, the Court reasoned that the exclusionary rule should not be applied when it does not result in

detering improper conduct. In *Evans*, court employees had mistakenly failed to notify police about the quashed warrant; there was "no basis for believing that application of the exclusionary rule in these circumstances will have a significant effect on court employees responsible for informing the police that a warrant has been quashed." *Id.* at 14. Because court clerks have no stake in the outcome of criminal prosecutions, exclusion of evidence cannot be expected to deter clerks from failing to inform police that a warrant has been quashed.

There is no indication that the arresting officer was not acting objectively reasonably when he relied upon the police computer record. Application of the *Leon* framework supports a categorical exception to the exclusionary rule for clerical errors of court employees.

Id. at 15-16.

The exclusionary rule does not apply when police mistakes that lead to unlawful searches are merely the result of isolated negligence and "not systematic error or reckless disregard of constitutional requirements." *Herring v. United States*, 555 U.S. ___, 129 S.Ct. 695 (2009). In *Herring v. United States*, an officer reasonably believed that there was an outstanding arrest warrant for the defendant, but that belief turned out to be wrong because of a negligent bookkeeping error by another police employee. Based on this false belief, the police seized contraband from the defendant during a search incident to arrest. Finding that the contraband need not be excluded from evidence, the Court reasoned that "[t]o trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system [T]he exclusionary rule serves to deter deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systematic negligence." *Id.* at ___, 129 S.Ct. at 702.

Because the arrest in this case was based on an instance of isolated negligence, the conduct at issue did not arise to the level required to trigger the exclusionary rule. *Id.* at ____, 129 S.Ct. at 703.

In Arizona, the "good faith" exception to the exclusionary rule applies in the context of an arrest warrant as well as in the search warrant context. *State v. Hyde*, 186 Ariz. 252, 921 P.2d 655 (1996). In *State v. Hyde*, a murder defendant was arrested on a warrant for an unrelated robbery and made statements to police implicating himself in the murders. He moved to suppress those statements, arguing that the arrest warrant was not based on probable cause because it lacked a supporting affidavit. The Arizona Supreme Court found that, even if the magistrate who issued the warrant failed in her duty to determine whether probable cause existed, suppression was not required because the officers had a good faith basis to believe that there was probable cause and they had the right to rely on the warrant.

The Arizona Legislature has also enacted a good faith statute. A.R.S. § 13-3925(B) states:

The trial court shall not suppress evidence which is otherwise admissible in a criminal proceeding if the court determines that the evidence was seized by a peace officer as a result of a good faith mistake or technical violation.

The statute defines "good faith mistake" as "a reasonable judgmental error concerning the existence of facts that if true would be sufficient to constitute probable cause."

A.R.S. § 13-3925(F)(1). The statute also defines "technical violation" as "a reasonable good faith reliance upon . . . [a] statute which is subsequently ruled unconstitutional," "[a] warrant which is later invalidated due to a good faith mistake," or "[a] controlling court precedent which is later overruled, unless the court overruling the precedent

orders the new precedent to be applied retroactively." A.R.S. § 13-3925(F)(2). The statute also provides that civil remedies and/or criminal sanctions may still be applied against "any individual or government entity found to have conducted an unreasonable search or seizure." A.R.S. § 13-3925(D). The statute is specifically inapplicable to wiretapping cases. A.R.S. § 13-3925(E).